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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION 4

In re J. C., a Person Coming Under the Juvenile Court Law.	
THE PEOPLE, Plaintiff and Respondent, v. J. C., Defendant and Appellant.	A123929 (Sonoma County Super. Ct. No. 35710-J)

J. C. (Minor) appeals from an order sustaining a juvenile wardship petition pursuant to Welfare and Institutions Code[1] section 602 made after the juvenile court found true an allegation that he had received stolen property. (Pen. Code, § 496d, subd. (a).) Minor contends the court erred in denying his motion to dismiss the petition at the close of the People's case. We agree and reverse.

I. FACTUAL BACKGROUND

On the morning of December 10, 2008, Run My left her car running in the driveway of her residence in Santa Rosa while she went inside. When she returned, the car was gone.

[1] All undesignated statutory references are to the Welfare and Institutions Code.

At approximately 5:00 p.m. the same day, Deputy Patrick Sharp of the Sonoma County Sheriff's Department saw the stolen car and stopped it. There were six people in the vehicle, including Minor. An amended petition pursuant to section 602 alleged in count I that Minor had committed automobile theft (Veh. Code, § 10851, subd. (a)), and in count II that he had received the stolen vehicle (Pen. Code, § 496d, subd. (a)). Each count included a gang enhancement. (*Id.*, § 186.22, subd. (b)(1)(A).)

At the hearing on the petition, A. A., a passenger in the car, testified that the other five people in the vehicle were Jairo (the driver), Jasmine, Esteban, A. V., and Minor. They picked A. A. up at about 3:00 in the afternoon. She knew all the passengers in the car well, except for Minor, whom she had never previously met or seen with the other passengers. She and the other passengers in the car were "cruising around" and drove from Windsor to Healdsburg and Bodega Bay. Jairo was the only person who drove, and he did not give the keys to anyone else. They stopped for gas in Bodega Bay and the occupants contributed money to pay for the gas. A. A. asked who owned the car, and A. V. replied that his father had given him the car as a present. A. A. did not believe A. V. because the car was too nice. When the police began to follow the car, A. V. and Esteban told Jairo to keep driving; A. A. and Jasmine told him to stop. Minor did not tell Jairo to do anything, only saying that he would run after Esteban expressed his intention to run. When the driver stopped the car, no one ran away.

A. V. testified that he and Minor were at a gas station in Santa Rosa on December 10, when Jairo drove by, and he and Minor got in the vehicle. As far as he knew, Minor did not know any of the other occupants of the car. He got in the car without asking whose car it was or paying any attention because he had been smoking marijuana and drinking beer. He also smoked marijuana and drank when he was in the car. He did not recall anyone asking if the car was stolen or who owned the car. He realized the car was stolen when police began to follow the vehicle. No one but Jairo drove the car. A. V. acknowledged having been in the Sureño gang.

Detective William Harm of the California Highway Patrol testified as an expert in the area of criminal street gangs. He testified that Jairo, A. V., and Esteban were known

members of the Sureño street gang, and that A. V. was found with gang indicia, blue bandanas, on the date in question. He also said that Minor's clothing on the day he was arrested, a blue and black L.A. baseball cap with a solid blue sweatshirt, was representative of the Sureño street gang and noted that Minor admitted to a deputy on the scene that he was a Sureño. Harm described an incident that occurred on December 12, in which Minor was seen flashing gang signs to another Sureño gang member at juvenile hall. He acknowledged, however, that Minor had a far smaller gang history than the other male occupants of the car. Harm was of the opinion that the theft and possession of the vehicle was committed in association with and for the benefit of the criminal street gang, and that possession of stolen vehicles makes it easier for the gang to commit other crimes.

In his own defense, Minor testified that on the date in question, he was with A. V. According to Minor, he and A. V. saw Jairo in a car sometime between 11:30 a.m. and 1:00 p.m., got in the car, and went cruising. They drove around Santa Rosa and Healdsburg, picked up two girls in Windsor, and went to Bodega Bay, before returning to Santa Rosa. Minor drank a beer in the car. He had not met Jairo or any of the other passengers in the vehicle except for A. V. before that day. No one besides Jairo drove the car that day, and no one mentioned the car was stolen. The female passengers asked whose car it was, but no one answered the question. Minor believed the car belonged to Jairo. Minor did not say anything when the police began following the car, and no one said they were going to run. He told one of the police officers he had been a Sureño for about a year. Minor did not have a driver's license and did not know how to drive.

At the contested jurisdictional hearing, defense counsel moved for a dismissal under section 701.1 at the close of the People's case, arguing that there was insufficient evidence Minor had stolen the vehicle or that he was in possession of it. The motion was denied. At the close of the case, the court dismissed count I, automobile theft and its corresponding gang enhancement, but found true the allegations of count II, receiving stolen property, including the gang enhancement.

II. DISCUSSION

A. Denial of Motion to Dismiss

Minor contends the People did not present sufficient evidence that he had possession, dominion, or control of the stolen car and, therefore, the juvenile court erred in denying his motion to dismiss. Section 701.1 provides: "At the hearing, the court, on motion of the minor or on its own motion, shall order that the petition be dismissed and that the minor be discharged from any detention or restriction therefore ordered, after the presentation of evidence on behalf of the petitioner has been closed, if the court, upon weighing the evidence then before it, finds that the minor is not a person described by Section 601 or 602. If such a motion at the close of evidence offered by the petitioner is not granted, the minor may offer evidence without first having reserved that right."

In ruling on a motion under section 701.1, the juvenile court weighs the evidence, evaluates the credibility of witnesses, and determines whether the case against the minor is proved beyond a reasonable doubt. (*In re Andre G.* (1989) 210 Cal.App.3d 62, 66 (*Andre G.*).) We review the juvenile court's ruling for substantial evidence, " 'assum[ing] in favor of [the court's] order the existence of every fact from which the [court] could have reasonably deduced from the evidence whether the offense charged was committed and if it was perpetrated by the person or persons accused of the offense. [Citations.]' " (*In re Man J.* (1983) 149 Cal.App.3d 475, 482; see also *Andre G.*, *supra*, 210 Cal.App.3d at p. 65.) In considering whether the juvenile court properly denied a motion pursuant to section 701.1, we consider only the evidence received in the People's case. (*In re Stephen P.* (1983) 145 Cal.App.3d 123, 128 (*Stephen P.*), disapproved on another ground in *People v. Cuevas* (1995) 12 Cal.4th 252, 275, fn. 5; see also *In re Anthony J.* (2004) 117 Cal.App.4th 718, 727-728 (*Anthony J.*))[2]

[2] This mirrors the standard applied in considering motions for judgment of acquittal made in criminal cases under Penal Code section 1118.1, under which the sufficiency of the evidence is tested as it stood at the point the motion was made. (See *People v. Stevens* (2007) 41 Cal.4th 182, 200; *People v. Cole* (2004) 33 Cal.4th 1158, 1213.)

To sustain a conviction of receiving stolen property, the prosecution must prove (1) the property was stolen; (2) the defendant knew the property was stolen; (3) the defendant had possession of stolen property. (*People v. Land* (1994) 30 Cal.App.4th 220, 223 (*Land*); *People v. Russell* (2006) 144 Cal.App.4th 1415, 1425.) Possession of the stolen property may be actual or constructive and need not be exclusive. (*Land, supra,* 30 Cal.App.4th at p. 223.) "Physical possession is also not a requirement. It is sufficient if the defendant acquires a measure of control or dominion over the stolen property." (*Id*. at p. 224.) Additional circumstances may be subtle in some fact contexts. (*Id*. at p. 225.) "However, . . . mere presence near the stolen property, or access to the location where the stolen property is found is not sufficient evidence of possession, standing alone, to sustain a conviction for receiving stolen property." (*Id*. at p. 224; see also *People v. Zyduck* (1969) 270 Cal.App.2d 334, 336 (*Zyduck*).)

This rule applies when the defendant is a passenger in a stolen vehicle. "Presence in the passenger seat is not enough to show possession of a stolen automobile." (*Zyduck, supra,* 270 Cal.App.2d at pp. 335-336.) As stated in *Land*, "the fact a person is a passenger in a stolen vehicle will not necessarily preclude a conviction for receiving stolen property. . . . [A]dditional factual circumstances are necessary to establish a passenger has possession or control of the stolen car." (*Land, supra,* 30 Cal.App.4th at p. 228.) "[T]here is no single factor or specific combination of factors which unerringly points to possession of the stolen vehicle by a passenger"; instead, "the question of possession turns on the unique factual circumstances of each case." (*Ibid*.)

The two leading California cases on the question of when a passenger in a stolen vehicle may be found to have possession of it are *Land* and *Anthony J*. The court in *Land* concluded the evidence supported a finding of possession. There, the defendant and the driver of a stolen vehicle were friends who drank and used drugs together. (*Land, supra,* 30 Cal.App.4th at p. 228.) The defendant drove around as a passenger in a vehicle, knowing it was stolen. After they had been driving for some time, the driver said he wanted to rob somebody, and stole food from a convenience store. They resumed driving the car, then intentionally bumped another car, robbed and shot the driver of the other car,

leaving him for dead, and took off in the shooting victim's car. (*Id*. at pp. 222-223.) The court determined that the stolen vehicle was "instrumental in their joint criminal enterprise," and concluded that based on defendant's "close relationship to the driver, use of the vehicle for a common criminal mission, and stops along the way before abandoning it," the defendant was in a position to exert control over the vehicle. (*Id*. at p. 228.)

Before reaching this conclusion, the court in *Land* noted with approval an opinion of the New Jersey Supreme Court, *State v. McCoy* (1989) 116 N.J. 293 [561 A.2d 582] (*McCoy*), which decided that evidence the defendant had walked over and placed his hands on a stolen vehicle with the intent to ride around as a passenger was not sufficient to establish possession of a stolen vehicle. (*Land, supra,* 30 Cal.App.4th at pp. 226-227, citing *McCoy, supra*, 561 A.2d at pp. 585, 588.) In doing so, the *Land* court found persuasive *McCoy*'s conclusion that " 'an inference of possession may arise from a passenger's presence in a stolen automobile when that presence is coupled with additional evidence that the passenger knew the driver, knew that the vehicle was stolen, and intended to use the vehicle for his or her own benefit and enjoyment. Those facts could lead a jury to infer that it is more probable than not that the passenger had both the intention and the capacity to control the stolen vehicle. A jury might infer that such a passenger could exert control over the vehicle, an inference that would support a finding of constructive possession. . . .' (561 A.2d at p. 588.)" (*Land, supra,* 30 Cal.App.4th at p. 227.) The *Land* court also noted that decisions in other jurisdictions had "similarly concluded strong evidence of the passenger's guilty knowledge and a close relationship to the driver or thief, or evidence of a defendant's conduct indicating control, may give rise to an inference of possession." (*Ibid*.)[3]

[3] The court in *Land* summarized those decisions as follows: "(See, e.g., *Hurston v. State* (1991) 202 Ga.App. 311 . . . [passenger exerted control over stolen vehicle because left in car with motor running while driver went into convenience store]; *People v. Tucker* (1989) 186 Ill.App.3d 683 . . . [passenger had tool for prying off spoke wheels and kept lookout when driver got out of car]; *Riddle v. State* (1990) 303 Ark. 42 . . . [passenger's presence in stolen vehicle, flight from the police when car stopped and

The Court of Appeal in *Anthony J.*, on the other hand, concluded that on the facts of that case, there was insufficient evidence of possession of a stolen vehicle. The minor there was a passenger in the backseat of a stolen vehicle for approximately 20 to 30 minutes. He did not know the driver of the vehicle well or know that the vehicle was stolen. (*Anthony J., supra*, 117 Cal.App.4th at pp. 723-724.) The court concluded the evidence did not show that the minor had possession of the vehicle, either actual or constructive, stating: "The facts as they existed at the close of the People's case did not

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violent attempt to avoid capture sufficient evidence from which jury could infer constructive possession of the stolen vehicle]; *State v. Alexander* (1987) 215 N.J.Super. 523 . . . [evidence defendant passenger in vehicle six hours after its theft, lived close to the place of the theft and gave police false information sufficient evidence for jury to infer he constructively possessed stolen vehicle]; *People v. Johnson* (1978) 64 Ill.App.3d 1018 . . . [evidence defendant passenger in car for three hours but when arrested found crouched beneath steering wheel and previous driver exited car from passenger side adequate evidence to establish possession]; *In re Ashby* (1978) 37 N.C.App. 436 . . . [evidence passenger broke into another car and fled scene when driver of stolen car attempted to evade police sufficient to infer possession of stolen car]; *People v. Murphy* (1984) 126 Misc.2d 1023 . . . [passenger had possession of stolen car where he witnessed theft by his friend, accepted invitation to ride in the car and got in and out of the car during five-hour ride].)" (*Land*, *supra*, 30 Cal.App.4th at p. 227.) Other more recent out-of-state cases on this point include *Com. v. Namey* (2006) 67 Mass.App.Ct. 94, 100-101, fn. omitted [852 N.E.2d 116, 121] [sufficient evidence that passenger of stolen car had constructive possession of car where car contained two disguises (one for each occupant) along with tools (one of "burglarious character") and hypodermic needles, passenger and driver both ducked down after seeing officer, then fled and hid after car hit a tree, and they ran again despite officer's order to stop]; *Com. v. Darnell D.* (2005) 445 Mass. 670, 673-674 [840 N.E.2d 33, 36] [insufficient evidence juvenile possessed stolen car when there was no indication he drove car or provided directions to driver]; *Harris v. State* (2000) 247 Ga.App. 41, 43 [543 S.E.2d 75, 77] [insufficient evidence of possession or control where defendant was a passenger and ran from the police, but there was no evidence that car was driven without keys or that steering column was damaged, that the defendant had stolen property in his possession, or that he admitted doubts as to car's ownership]; and *People v. Anderson* (1999) 188 Ill.2d 384, 392-393 [721 N.E.2d 1121, 1125-1126] [sufficient evidence of possession of stolen vehicle where defendant was shoplifting, asked another shoplifter whether he had a car, got into car with second shoplifter and drove to another location to sell shoplifted goods, then to another location to buy cocaine, continued to another store to shoplift again, and used stolen car to avoid capture when approached by police].)

comport with those in *Land*, and the People's case at most demonstrated mere presence by Anthony J. in the stolen vehicle. The only evidence presented at that time was that four young men got out of a car, they ran as a patrol car drove nearby, a set of keys was found near them when they were detained, and the driver of the vehicle was identified by a witness, but Anthony J. was not. There were no facts showing that Anthony J. and the driver were friends, that they had engaged in criminal activity together in the past, that he was a passenger shortly after the vehicle was stolen, or that Anthony J. and the driver jointly used the vehicle to commit crimes. Thus, the People's evidence did not demonstrate beyond a reasonable doubt that Anthony J. had possession of the vehicle, either actual or constructive. Accordingly, the court erred in denying Anthony J.'s motion to dismiss made at the close of the People's case . . . ." (*Id.* at p. 729.)

The facts of this case lie closer to *Anthony J.* than to *Land*. There was no evidence that Minor had ever met the driver of the car (or indeed any other passenger aside from A. V.) or that he directed the driver's actions in any way. In fact, according to A. A., Minor was the only passenger not to do so: Although the other occupants of the car told Jairo either to stop or to keep driving when the police began to follow the car, Minor merely echoed Esteban's intention to run. Although there was evidence that Minor was associated with the Sureño gang, there was nothing to indicate that he had engaged in criminal activity with the driver in the past. Nor can we conclude that A. V.'s use of marijuana in the car meant that Minor and Jairo, the driver, "jointly used the vehicle to commit crimes." (*Anthony J.*, *supra*, 117 Cal.App.4th at p. 729; see also *Land*, *supra*, 30 Cal.App.4th at p. 228.) Moreover, the evidence that Minor knew the car was stolen is insubstantial; although A. A. testified that Minor said he would run when he realized that police officers were following the car, he did not in fact do so, and there was no evidence that he took part in stealing the car.[4]

[4] As we have noted, our review of the denial of the motion to dismiss is limited to the facts before the juvenile court at the close of the People's case, and accordingly, we will not consider Minor's testimony. (*Anthony J.*, *supra*, 117 Cal.App.4th at pp. 727-728; *Stephen P.*, *supra*, 145 Cal.App.3d at p. 128.)

Harm's testimony that the theft and possession of the car were committed for the benefit of the Sureño gang does not persuade us otherwise. The question before us is whether Minor exercised a measure of control or dominion over the stolen car. (*Land, supra*, 30 Cal.App.4th at p. 223.) Nothing in the People's case indicates that Minor had any control over the car or that he acted as anything other than a passive passenger.

On this record, the People did not present sufficient evidence to support a finding that Minor violated Penal Code section 496d, subdivision (a). Accordingly, the juvenile court should have granted Minor's motion to dismiss pursuant to section 701.1.[5]

III. DISPOSITION

Because we conclude the juvenile court erred in denying Minor's motion to dismiss as to count II—the only count the court found true—the order appealed from is reversed.

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RIVERA, J.

We concur:

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RUVOLO, P.J.

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REARDON, J.

[5] Because we conclude the juvenile court should have granted Minor's motion to dismiss, we need not consider Minor's remaining contentions on appeal.